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## DO THE MARRIED WOMEN'S ACTS PERMIT A PERSONAL JUDGMENT TO BE RENDERED AGAINST A MARRIED WOMAN GARNISHED FOR HER HUSBAND'S DEBT?

Our various Married Women's Acts which have attempted to remove some, if not all, of the common law disabilities of married women, have involved the courts in much confusion. Possibly the unfriendly attitude of the courts toward this legislation is responsible for some of the difficulty in which they often find themselves in determining the status of married women under these modern statutes.

A federal district court had occasion recently to wrestle with the Arkansas Married Women's Act, and the decision of the court assumes the hostile attitude which is taken by nearly all the courts towards this legislation, and practically retains the common-law disabilities of married women in spite of the statute, at least so far as they relate to actions between husband and wife, or actions by third persons to reach property of the husband in the wife's possession.

The case to which we refer in the preceding paragraph is that of Allen-West Commission Co. v. Grumbles, 161 Fed. 461, where it was held that a personal judgment could not be rendered against a married woman garnished for her husband's debt. In that case the attempt was made to reach, by garnishment, money which the wife had obtained by the sale of some of her husband's personalty. On the garnishment proceedings it was shown that at the time of the service of the garnishment the wife had in her possession the property sought to be reached, but afterwards turned it over to her husband. The plaintiff sought to secure a personal judgment against the wife, but the court held this to be impossible, even though the statute permitted married women to sue and be sued, on the ground that the husband was not given the right by such a statute to sue his wife, and, therefore, since the creditor cannot recover from the garnishee if the debtor himself could not, the plaintiff's action against the wife of the debtor for a personal judgment must fail.

While the argument of Judge Rogers in this case is apparently irresistible in its logic, we desire to call attention to a practical difficulty which such a construction of our Married Women's Acts raises, to-wit: that it enables a wife to assert her common-law disabilities whenever she is sued, or where for any other reason such assertion is desirable, but dignifies her with all the rights of a person *sui juris* when she, herself, comes to sue or to engage in business, or to enforce her contracts or her right to hold property. At common law a creditor could attach any personal property in the possession of the wife for the husband's debts (Miles v. Williams, 1 P. Wms, 249), but under the Married Women's Acts the wife's personality is exempt from executions against the husband, (21 Cyc. 1585). A creditor is therefore in a worse situation so far as regards the husband's or wife's personal property which may pass so readily from one to the other than he was before the disabilities of coverture were removed.

Take the situation in the principal case as an instance. A wife sells some of her husband's personalty and receives the money therefor. At common law the creditor need not wait a minute; he can order the sheriff to seize the property, or the proceeds, as the husband's, under an attachment against the husband. Under our Married Women's Acts this procedure is impossible. The wife is *sui juris* to the extent, at least, that she can now receive personal property from her husband, and can hold it in her own right free from the control of her husband and from seizure

under execution or attachment for his indebtedness. Such statutes make it necessary, in order for the creditor to reach personal property belonging to the husband in the hands of the wife, to summon her as garnishee. Then, if he cannot go further and compel her to respond personally where she is proven to have been possessed of the personalty sought to be reached, and refuses to turn it over or to make satisfactory disclosure, opportunities for gross injustice are afforded under the protection of law.

Moreover, even if the husband could sue his wife under any of the Married Women's Acts, he could not recover from her a valid gift of personalty, even where made without consideration. But, would the court in the principal case have said in such a case, that the wife could not have been summoned as garnishee and judgment rendered against her, simply on the ground that the debtor could not have recovered the gift from his wife in an action against her? No; because Judge Rogers specially excepts such a case, saying: "The rule that a plaintiff by garnishment cannot place himself in a superior position as regards a recovery than is occupied by the principal defendant is subject, under the weight of modern decisions, to the exception that, where one is in possession of property of another upon a contract which was fraudulent as to creditors, it may, in his hands, be reached by garnishment." Why, then, make an exception in a case where under statute or judicial construction the husband or wife are not permitted to sue one another? A gift of personalty by the husband to the wife may be good as to all the world except as to the husband's creditors. The latter's action against the wife in the form of a garnishment proceeding is more in the nature of an action to declare such a conveyance fraudulent, and to seize it for the creditor's protection. Garnishee process, however, is the only effective process in such cases. It does the creditor no benefit to have the wife return the gift to her husband. He must be permitted either to seize it in her possession as the property of the debtor or to hold her personally responsible as garnishee for the value of the personalty which she thus holds at the time of the service of the garnishment process.

We believe that the Maryland Supreme Court in the case of Odend'hal v. Devlin, 48 Md. 440, reaches the right conclusion on this question. In this case the process was reversed, to-wit, the wife's creditors were attempting to garnishee a gift of personalty in the husband's possession. The principle, however, is the same, as objection was there made that since the wife could not sue the husband, the latter could not be reached as garnishee by the wife's creditors. The court in sustaining a judgment against the husband, used this language: "The marital relations in this state have been materially changed by the Code so far as rights of property are concerned. The wife may be seized of the legal estate in lands, and she may hold the legal property in personalty, in her own right; no trustee being necessary, and, in respect to property held to her sole and separate use, she has the right to resort to courts of law or equity for its protection. A married woman carrying on business in her own name as a sole trader contracts debts in respect to her business as if she were a feme sole. The remedy given to her creditors for the recovery of debts due them, by the process of attachments against her property, and credits, would be nugatory and worthless, if she could be permitted to place her funds or property in the hands of her husband, and it should be he'd that an attachment of this kind could not be laid in his hands as garnishee."

## NOTES OF IMPORTANT DECISIONS

**EASEMENT—WHAT IS A "WAY OF NECESSITY?"—What is a way of necessity which is supposed to go with a conveyance of land? Does it mean a way of convenience or must the way, sought to be imposed on the land of another, be one of actual necessity? Thus,**

for instance, suppose a wagon road cutting across the grantor's land connects over a level piece of ground with the county rock road in the direction of the county seat at a distance of five hundred yards. Suppose also, however, the grantee's land at some distant corner in an opposite direction from the county seat touches a dirt road which, after some miles of meandering, finally reaches the county road, and suppose also the way across the grantee's land to this distant corner is rough and very steep and never graded for a wagon road, do these facts entitle the grantee to use the short, smooth road over the grantor's land as a way of necessity?

This was the question before the California Supreme Court in the case of Corea v. Higuera, 95 Pac. Rep. 882, where it was held that such facts did not entitle the grantee to a way of necessity to be imposed on the grantor's land as an easement. Of course, if the "way" were an "appurtenance" that went with the conveyance of the land to the grantee that would be a different question, but where the facts are not sufficient to dignify the "way" as an appurtenance, it must be proved to be a "way as necessity" in order to establish it as an easement. This is in effect the court's decision. The judge who wrote the opinion makes the following statement: "The principal point urged is that neither the complaint nor the findings state a case entitling the plaintiff to relief. Assuming that the plaintiff claims a "way of necessity," the appellants argue that the facts alleged and found do not authorize the assertion of such right. This conclusion is undoubtedly sound. The complaint shows, as do the findings, that the land conveyed to plaintiff's predecessor was at all times bounded on one side by the Higuera ranch road, which connected with the county roads. This circumstance alone is fatal to the existence of of a way of necessity. The facts that there was no constructed track for teams connecting plaintiff's land with the Higuera ranch road, as may be inferred from the complaint, or that, as the court finds, plaintiff had not "easy access" to that road, would not entitle him to assert a right of way by necessity."

The case of Kripp v. Curtis, 71 Cal. 62, 11 Pac. 879, is very pertinent to this question and the declaration of the court is very clear. The court in that case said: "The right of way from necessity must be in fact what the term naturally imports, and cannot exist except in cases of strict necessity. * * * That the way over his land is too steep or too narrow, or that other and like difficulties exist, does not alter the case, and it is only when there is no way through his own land that a grantee can claim a right over that of his grantor. It must also appear that the grantee has no other way."

## THE SANCTION OF INTERNATIONAL LAW.*

One accustomed to the administration of municipal law who turns his attention for the first time to the discussion of practical questions arising between nations and dependent upon the rules of international law, must be struck by a difference between the two systems which materially affects the intellectual processes involved in every discussion, and which is apparently fundamental.

The proofs and arguments adduced by the municipal lawyer are addressed to the object of setting in motion certain legal machinery which will result in a judicial judgment to be enforced by the entire power of the state over litigants subject to its jurisdiction and control. Before him lies a clear, certain, definite conclusion of the controversy, and for the finality and effectiveness of that conclusion the sheriff and the policeman stand always as guarantors in the last resort.

When the international lawyer, on the other hand, passes from that academic discussion in which he has no one to convince but himself, and proceeds to seek the establishment of rights or the redress of wrongs in a concrete case, he has apparently no objective point to which he can address his proofs or arguments, except the conscience and sense of justice of the opposing party to the controversy. In only rare, exceptional and peculiar cases, do the conclusions of the international lawyer, however clearly demonstrated, have behind them the compulsory effect of possible war. In the vast majority of practical questions arising under the rules of international law there does not appear on the surface to be any

*We have been requested to republish this great address of Hon. Elihu Root The subject is one of increasing importance, which every well-informed lawyer should understand.

reason why either party should abandon its own contention or yield against its own interest to the arguments of the other side. The action of each party in yielding or refusing to yield to the arguments of the other appears to be entirely dependent upon its own will and pleasure. This apparent absence of sanction for the enforcement of the rules of international law has led great authority to deny that those rules are entitled to be called law at all; and this apparent hopelessness of finality carries to the mind, which limits its consideration to the procedure in each particular case, a certain sense of futility of argument.

Nevertheless, all the foreign offices of the civilized world are continually discussing with each other questions of international law, both public and private, cheerfully and hopefully marshaling facts, furnishing evidence, presenting arguments and building up records, designed to show that the rules of international law require such and such things to be done or such and such things to be left undone. And in countless cases nations are yielding to such arguments and shaping their conduct against their own apparent interests in the particular cases under discussion, in obedience to the rules which are shown to be applicable.

Why is it that nations are thus continually yielding to arguments with no apparent compulsion behind them, and before the force of such arguments abandoning purposes, modifying conduct, and giving redress for injuries? A careful consideration of this question seems to lead to the conclusion that the difference between municipal and international law, in respect of the existence of forces compelling obedience, is more apparent than real, and that there are sanctions for the enforcement of international law no less real and substantial than those which secure obedience to municipal law.

It is a mistake to assume that the sanction which secures obedience to the laws of the state consists exclusively or chiefly of the pains and penalties imposed by the law itself for its violation. It is only in exceptional cases that men refrain from crime through fear of fine or imprisonment. In the vast majority of cases men refrain from criminal conduct because they are unwilling to incur in the community in which they live the public condemnation and obloquy which would follow a repudiation of the standard of conduct prescribed by that community for its members. As a rule, when the law is broken the disgrace which follows conviction and punishment is more terrible than the actual physical effect of imprisonment or deprivation of property. Where it happens that the law and public opinion point different ways, the latter is invariably the stronger. I have seen a lad grown up among New York toughs break down and weep because sent to a reformatory instead of being sentenced to a state's prison for a violation of law. The reformatory meant comparative ease, comfort, and opportunity for speedy return to entire freedom; the state's prison would have meant hard labor and long and severe confinement. Yet in his community of habitual criminals a term in state's prison was a proof of manhood and a title to distinction, while consignment to a reformatory was the treatment suited to immature boyhood. He preferred the punishment of manhood with what he deemed honor to the opportunity of youth with what he deemed disgrace. Not only is the effectiveness of the punishments denounced by law against crime derived chiefly from the public opinion which accompanies them, but those punishments themselves are but one form of the expression of public opinion. Laws are capable of enforcement only so far as they are in agreement with the opinions of the community in which they are to be enforced. As opinion changes old laws become obsolete and new standards force their way into the statute books. Laws passed, as they sometimes are, in advance of public opinion ordinarily wait for their enforcement until the progress of opinion has reached recognition of their value. The force of law is in the public opinion which prescribes it.

The impulse of conformity to the standard of the community and the dread of its condemnation are reinforced by the practical considerations which determine success or failure in life. Conformity to the standard of business integrity which obtains in the community is necessary to business success. It is this consideration, far more frequently than the thought of the sheriff with a writ of execution, that leads men to pay their debts and to keep their contracts. Social esteem and standing, power and high place in the professions, in public office, in all associated enterprise, depend upon conformity to the standards of conduct in the community. Loss of these is the most terrible penalty society can inflict. It is only for the occasional nonconformist that the sheriff and policemen are kept in reserve; and it is only because the noncomformists are occasional and comparatively few in number that the sheriff and policeman can have any effect at all. For the great mass of mankind, laws established by civil society are enforced directly by the power of public opinion, having, as the sanction for its judgments, the denial of nearly everything for which men strive in life.

The rules of international law are enforced by the same kind of sanction, less certain and peremptory, but continually increasing in effectiveness of control. "A decent respect to the opinions of mankind" did not begin or end among nations with the American Declaration of Independence; but it is interesting that the first public national act in the New World should be an appeal to that universal international public opinion, the power and effectiveness of which the New World has done so much to promote.

In former times, each isolated nation, satisfied with its own opinion of itself and indifferent to the opinion of others, separated from all others by mutual ignorance and misjudgment, regarded only the physicial power of other nations. Gibbon could say of the Byzantine Empire: "Alone in the universe, the self-satisfied pride of the Greeks was not disturbed by the comparison of foreign merit; and it is no wonder if they fainted in the race, since they had neither competitors to urge their speed nor judges to crown their victory." Now, however, there may be seen plainly the effects of a long-continued process which is breaking down the isolation of nations, permeating every country with better knowledge and understanding of every other country, spreading throughout the world a knowledge of each government's conduct to serve as a basis for criticism and judgment, and gradually creating a community of nations, in which standards of conduct are being established, and a world-wide public opinion is holding nations to conformity or condemning them for disregard of the established standards. The improved facilities for travel and transportation, and enormous increase of production and commerce, the revival of colonization and the growth of colonies on a gigantic scale, the severance of the laborer from the soil, accomplished by cheap steamship and railway transportation and the emigration agent, the flow and return of millions of emigrants across national lines, the amazing development of telegraphy and of the press, conveying and spreading instant information of every interesting event that happens in regions however remote—all have played their part in this change.

Pari passu with the breaking down of isolation, that makes a common public opinion possible, the building up of standards of conduct is being accomplished by the formulation and establishment of rules that are being gradually taken out of the domain of discussion into that of general acceptance—a process in which the recent conferences at The Hague have played a great and honorable part. There is no civilized country now which is not sensitive to this general opinion, none that is willing to subject itself to the discredit of standing brutally on its power to deny to other countries the benefit of recognized rules of right conduct. The deference shown to this international public opinion is in due

proportion to a nation's greatness and advance in civilization. The nearest approach to defiance will be found among the most isolated and lest civilized of countries, whose ignorance of the world prevents the effect of the world's opinion; and in every such country internal disorder, oppression, poverty, and wretchedness mark the penalties which warn mankind that the laws established by civilization for the guidance of national conduct can not be ignored with impunity.

National regard for international opinion is not caused by *amour propre* alone—not merely by desire for the approval and good opinion of mankind. Underlying the desire for approval and the aversion to general condemnation with nations as with the individual, there is a deep sense of interest, based partly upon the knowledge that mankind backs its opinions by its conduct and that nonconformity to the standard of nations means condemnation and isolation, and partly upon the knowledge that in the give and take of international affairs it is better for every nation to secure the protection of the law by complying with it than to forfeit the law's benefits by ignoring it.

Beyond all this there is a consciousness that in the most important affairs of nations, in their political status, the success of their undertakings and their processes of development, there is an indefinite and almost mysterious influence exercised by the general opinion of the world regarding the nation's character and conduct. The greatest and strongest governments recognize this influence and act with reference to it. They dread the moral isolation created by general adverse opinion and the unfriendly feeling that accompanies it, and they desire general approval and the kindly feeling that goes with it.

This is quite independent of any calculation upon a physical enforcement of the opinion of others. It is difficult to say just why such opinion is of importance, because it is always difficult to analyze the action of moral forces; but it remains true and is universally recognized that the nation which has with it the moral force of the world's approval is strong, and the nation which rests under the world's condemnation is weak, however great its material power.

These are the considerations which determine the course of national conduct regarding the vast majority of questions to which are to be applied the rules of international law. The real sanction which enforces those rules is the injury which inevitably follows nonconformity to public opinion; while, for the occasional and violent or persistent law-breaker, there always stands behind discussion the ultimate possibility of war, as the sheriff and the policeman await the occasional and comparatively rare violators of municipal law.

Of course, the force of public opinion can be brought to bear only upon comparatively simple questions and clearly ascertained and understood rights. Upon complicated or doubtful questions, as to which judgment is difficult, each party to the controversy can maintain its position of refusing to yield to the other's arguments without incurring public condemnation. Upon this class of questions the growth of arbitration furnishes a new and additional opportunity for opinion to act; because, however complicated the question in dispute may be, the proposition that it should be submitted to an impartial tribunal is exceedingly simple, and the proposition that the award of such a tribunal shall be complied with is equally simple, and the nation which refuses to submit a question properly the subject of arbitration naturally invites condemnation.

Manifestly, this power of international public opinion is exercised not so much by governments as by the people of each country whose opinions are interpreted in the press and determine the country's attitude towards the nation whose conduct is under consideration. International opinion is the consensus of individual opinion in the nations. The most certain way to promote obedience to the law of nations and to

substitute the power of opinion for the power of armies and navies is, on the one hand, to foster that "decent respect to the opinions of mankind" which found place in the great Declaration of 1776, and on the other hand, to spread among the people of every country a just appreciation of international rights and duties and a knowledge of the principles and rules of international law to which national conduct ought to conform; so that the general opinion, whose approval or condemnation supplies the sanction for the law, may be sound and just and worthy of respect.

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PHYSICIANS AND SURGEONS—"MAGIC HEALING" NOT THE "PRACTICE OF MEDICINE."

BENNETT v. WARE.

Court of Appeals of Georgia, May 7, 1908.

One who professes to "heal the sick without the use of medicine," but "by placing his hands upon that portion of the body that is affected by pain," the healing resulting from "magic power given direct from the Lord," is not a medical practitioner, and such treatment of the sick is not the "practice of medicine," as defined and regulated by the statutes of this state.

Hill, C. J.: The plaintiff in error was arrested on a warrant sworn out by the defendant in error charging him with practicing medicine without a license, in violation of the statutes of this state. On a preliminary investigation he was discharged, and thereupon he brought suit against the defendant in error for malicious prosecution and false imprisonment. In the petition he alleges that at the time of his arrest and incarceration in the common jail he was engaged in the "profession of healing diseases without the use of medicine, commonly and better known as a 'Magic Healer' "; that he "heals the sick without the use of medicine in any form or manner whatever by placing his hands upon that portion of the body that is affected by pain; that this gift or magic power is given him direct from the Lord"; that he made no charge for his services, but accepted such compensation as the gratitude of his patients induced them to voluntarily offer, and that, as a result of his arrest and prosecution for practicing medicine without a license, he suffered great humiliation and mortification, lost two days' compensation in "gifts," amounting to $25 per day, was put to an expense of $15 in employing a lawyer to defend him against the untruthful accusation, and, in fact, "lost almost his entire practice"; that his prosecution was malicious and without probable cause, and he claims to have been damaged in the sum of $5,000. A demurrer was filed to this petition on the ground that the allegation showed that the plaintiff was in fact practicing medicine and suggesting remedies for the sick and afflicted, and receiving compensation therefor, without complying with statutes of the state regulating the practice of medicine, and therefore that there was probable cause for his arrest and prosecution. The demurrer was sustained, and this judgment comes to this court.

The direct question for determination is whether the plaintiff, under the facts set out in his petition, was engaged in the practice of medicine as defined by the statutes of this state. He insists that his practice is neither within the letter nor the spirit of the law. By virtue of its police power, the state has enacted legislation to protect the public against unfit and incompetent practitioners of medicine, and to prevent the hurtful results of malpractice. A construction of this legislation will determine the issue made by the record. Section 1477 of the political code of 1895 prescribes who shall be authorized to practice medicine in this state. The practicing physician is required to have "a diploma from an incorporated medical college, medical school or university," or shall be one who has been "in active practice of medicine since the year 1866," after having attended "one or more full terms at a regularly chartered medical college," "or who was by law authorized to practice medicine in 1866, or shall have been licensed by the medical board." It is further provided that the governor of the state shall appoint three separate boards of medical examiners, each board to consist of five members selected from the three schools or systems of medicine designated by the statute, to wit, the "regular," or allopathic school, the homeopathic and the eclectic school. Persons who desire to practice medicine, and who are graduates of any incorporated medical college, school, or university requiring the designated course of study, are to be examined by one of these boards, the graduate of a particular school to be examined by the board composed of practitioners of that school. But, if the applicant desires to practice a system not represented by any one of the three boards, he may elect for himself the board before which he will appear for examination. When the examination is satis-

factory, the applicant is granted a certificate allowing him to practice medicine upon complying with the law in reference to registration. Pol. Code 1895, secs. 1479, 1482, 1486. Section 1478 of the political code, of 1895 undertakes to define the practice of medicine. "The words 'practice medicine' shall mean, to suggest, recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or other bodily injury or any deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation." Section 1490 declares that "any person shall be regarded as practicing medicine or surgery, within the meaning of this article who shall prescribe for the sick or those in need of medicine or surgical aid, and shall charge or receive therefor money or other compensation, or consideration, directly or indirectly."

In construing these statutes, it is apparent that the law of this state recognizes only three systems or schools of medicine—the "regular," the homeopathic, and the eclectic schools. It is impossible for one who desires to practice any other system to do so in this state as a practitioner of medicine, because under the law he cannot procure a license. In other words, the law only proposes to grant a license to practice medicine to the allopath, the homeopath, or the eclectic. It is true the statute provides that, "if the applicant desires to practice a system not represented by any of the" three boards, "he may elect for himself the board before which he will appear for examination" (section 1486); but this is a barren privilege, for none of the three boards can or will examine any applicant except one who has a diploma from a regular medical college, or who proposes to practice one of the three systems. For instance, none of the boards will recognize a diploma of an osteopath issued by an osteopathic school, because such school is not a regular school, and none of the boards would be competent to examine the osteopathic applicant on the system that he had studied, and the applicant would not be competent to pass an examination in any of the systems represented by the boards, for such systems formed no part of his curriculum. It would be absurd to say that one who practiced the healing art by magnetism, Christian Science, Spiritism, hypnotism, mesmerism, or any other form for the treatment of disease based upon a supernatural agency would be entitled to be examined by any one of the medical boards of the state; for the science of medicine is based on natural agencies. We therefore conclude that only those who propose to practice medicine by one of the schools or systems recognized by the statutes of this state are required to have a license.

But it is said that section 1478 of the political Code of 1895, undertakes to define the practice of medicine, and that this definition embraces the particular practice of the plaintiff in error. He expressly disclaims the use of medicine in any form whatever in his treatment of diseases, and therefore he must be excluded from the specific words of the definition, because he did not suggest, recommend, prescribe, or direct the use of any drug or medicine, appliance, or apparatus. According to his statement, his method consisted simply in laying his hands on the sick at the point or place of pain or disease, and the healing which followed was by a direct divine agency. Do the words in the statutory definition above given, "or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body," embrace an agency of this character? It may be conceded that the words "material or not material" are sufficiently broad to include at least every human or natural agency. But was it intended by the legislature to denominate as a medical agency, whether material or not material, an agency claimed to be supernatural? It is true that faith on the part of the sick is a potent influence in all treatment of disease; but can it be said that faith is an agency? Are the sick who may be cured by magnetism, mesmerism, or hypnotism cured by any medical agency; or is an answer to prayer such an agency and the person who prays practicing medicine? We cannot believe that the legislature intended to include in the practice of medicine what may be called psycho-therapeutics, or any form of the treatment of the sick which makes faith the curative agency. But the words "other agency," "material or not material," should be construed in obedience to the maxim, "Noscitur a sociis," and the meaning of the word "agency" must be limited by the associated words "drug, medicine, appliance, apparatus." In other words, the word "agency," even as qualified by the words "material or not material," was intended by the legislature to mean a substance of the general character of a drug or medicine or surgical apparatus or appliance, the obvious purpose being to protect society against the evils which might result from the use of drugs and medicines by the ignorant and unskillful. The purpose of the act is

clearly indicated by its title "to regulate the practice of medicine." It was not intended to regulate the practice of mental therapeutics or to embrace psychic phenomena. These matters lie within the domain of the supernatural. Practical legislation has nothing to do with them. If they are a part of a man's faith, the right to their enjoyment cannot be abridged or taken away by legislation. However the so-called wisdom of this world may regard these things, it cannot be denied that, long before the Savior told His disciples that in His name they should heal the sick and prevent all manner of diseases by the laying on of hands, the practice of healing by means of prayers, ceremonies, laying on of hands, incantations, hypnotism, mesmerism, and other forms of psycho-therapeutics existed. To the iconoclast who denounces these things as the figments of superstition, or to the orthodox physician who claims for his system all wisdom in the treatment of human malady, we commend the injunction of Him who was called "the Good Physician," when told that others than His followers were casting out devils and curing diseases: "Forbid them not." What matters the system, if, in fact, devils are cast out, and diseases are healed?

Going back to the question now under consideration, we deduce the following proposition: That the practice of medicine, defined by the code, supra, is limited to prescribing or administering some drug or medicinal substance, or to those means and methods of treatment for prevention of disease taught in medical colleges and practiced by medical practitioners; that the purpose of the act regulating the practice of medicine was to protect the public against ignorance and incompetency by forbidding those who were not educated and instructed as to the nature and effect of drugs and medicine, and for what diseases they could be administered, from treating the sick by such medical remedical agencies; that the law is not intended to apply to those who do not practice medicine, but who believe, with Dr. Holmes, that "it would be good for mankind, but bad for the fishes, if all the medicines were cast into the sea," nor to those who treat the sick by prayer or psychic suggestion. In the language of Chief Justice Clark: "Medicine is an experimental, not an exact science. All the law can do is to regulate and safeguard the use of powerful and dangerous remedies; * * * but it cannot forbid dispensing with them." "All the law so far has done or can do is to require that those practicing on the sick with drugs * * * shall be examined and found competent by those 'of like faith and order.'" State v. Biggs, 133 N. C. 729, 46 S. E. Rep. 401, 64 L. R. A. 139, 98 Am. St. Rep. 741. We are therefore clear that plaintiff in error was not a practitioner of medicine in the sense of our statute or in the popular sense; and the fact that he received fees and compensation for treatment in the shape of gifts could not make what would otherwise not be the practice of medicine a violation of the statute regulating such practice, for it must be apparent that, if the mere laying on of hands amounts to the practice of medicine in any sense, it is so without reference to fee or reward.

In the view herewith presented, we are strengthened by the decisions of courts of last resort in this country construing similar statutes. Osteopathy, a system of treating disease without the use of medicine in any form (which has made great advances in recent years, and, if the testimony of many intelligent men and women is to be believed, has worked many cures), has been frequently held not to be included in the term "practice of medicine or surgery," and therefore not included in the statute regulating the practice of medicine and surgery. The earliest case on the subject is that of Smith v. Lane, 24 Hun, 632, in which the Supreme Court of New York held that the practice of Osteopathy was not included in the statute, which declared it to be a misdemeanor for any person to practice medicine or surgery who was not authorized to do so by a license or diploma from some chartered medical school, state board of medical examiners, or medical society. This decision was based upon the idea that under the statute of New York no one would be issued a license to practice medicine unless he had a diploma from a regular medical college; the court giving to the words "practicing medicine" their usual, ordinary, and popular significance, and asserting that the purpose of the act was to prevent incompetent or unqualified persons from administering or applying medical agencies, or performing surgical operations that might be dangerous to the health, as well as to the lives of the persons treated or operated upon, and that the purpose of the statute was to confine the use of medicines and the operation of surgery to a class of persons who, upon examination, should be found competent and qualified to follow these professional pursuits, but that no such danger could possibly arise from the treatment of an osteopath, and for that reason no necessity existed for interfering with his pursuit by legislative action. A similar ruling was made in the case of an osteopath by the Supreme Court of Ohio in the case of

State v. Liffring, 61 Ohio St. 39, 55 N. E. Rep. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358. The Ohio statute entitled "An act to regulate the practice of medicine," in defining the "practice of medicine" uses the words "prescribe, direct, or recommend for the use of any person any drug or medicine, or other agency." That court held that a "system of rubbing and kneading the body," commonly known as osteopathy, for the treatment, cure, and relief of diseases and bodily infirmities was not an "agency" within the meaning of the statute. The Supreme Court of Kentucky in Nelson v. State Board of Health, 108 Ky. 769, 57 S. W. Rep. 501, 50 L. R. A. 383, held that one who practices osteopathy, not using medicine or surgical appliances, is not engaged in the practice of medicine within the meaning of the statute requiring a license for such practice, the language construed being, "to open an office for the practice of medicine, or to announce to the public in any way a readiness to treat the sick or afflicted, shall be deemed to engage in the practice of medicine within the meaning of this act"; and that this language referred only to those essaying to practice medicine proper by the use of drugs. In the case of State v. McKnight, 131 N. C. 717, 42 S. E. Rep. 580, 59 L. R. A. 187, the supreme court of that state held that an osteopath was not embraced within the term "practice of medicine." Chief Justice Clark, speaking for the court, says: "The state has not restricted the cure of the body to the practice of medicine and surgery—'allopathy,' as it is termed—nor required that before any one can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy, and be licensed by those skilled therein. To do that would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state has done has been to enact that, when one wishes to practice medicine or surgery, he must, as a protection to the public (not to the doctors), be examined and licensed by those skilled in surgery and medicine. The state can only regulate for the protection of the public. There is also 'divine science (which some has said is neither divine nor a science), and there may be other methods still. Whether these shall be licensed and regulated is a matter for the lawmaking power to determine. Certainly a statute requiring examination and license before beginning the practice of medicine or surgery neither regulates nor forbids any mode of treatment which absolutely excludes medicine and surgery from its pathology." In a subsequent case, the same court, by the same learned jurist, in a very elaborate opinion, reaffirmed the decision in the McKnight case, declaring that one who holds himself out as curing diseases by a system of drugless healing without medicine or prescription, and who charges and receives fees therefor and has no license, is not guilty of practicing medicine or surgery without license. State v. Biggs, supra. The Supreme Court of Mississippi, in the case of Hayden v. State, 81 Miss. 291, 33 So. Rep. 653, 95 Am. St. Rep. 471, in construing a statute in totidem verbis as the statute of this state, declared that it did not apply to an osteopath who used no drug or medicine, and that the word "agency," used in the statute, was not intended to include such treatment. Many other courts, construing statutes substantially similar to ours, have made like decisions.

We admit that there are some decisions that hold the contrary; but we believe that the better rule and one more in consonance with reason and in harmony with the republican character of our institutions is that all statutes for the regulation of the practice of medicine can be sustained only on the ground that they are necessary to protect the public against quack medical practitioners and impostors who prescribe drugs and medicines in treating diseases, and that these statutes are not directed against or intended to include those who eschew the practice of medicine altogether, but advance some new theory, such as osteopathy, for the alleviation of pain and the curing of the sick, or those who heal or pretend to heal the sick by any form of mental therapeutics such as Christian Science, magnetic treatment, hypnotism, and the like. As to the science of osteopathy, it may be remarked that a majority of the states have, by appropriate legislation, recognized it as a legitimate treatment of the sick, and as not included within existing statutes regulating the practice of medicine. We think these constitute legislative precedents in favor of the construction which we place upon the act in question; and we think, further, that the medical profession represented by the medical boards of this state who are charged with the duty of enforcing the law which regulates the practice of medicine gives the same construction to the statute in its omission to interfere with the rapidly increasing practice of osteopathy. We would not be understood as meaning to embrace the osteopath in the same class with the magnetic healer. The practice of osteopathy is entirely antithetic to magnetic healing. The former relies entirely upon natural agencies—

indeed, we may say physical agencies—while the latter relies solely upon the supernatural. We cite the decisions construing osteopathy as illustrations of our construction of the statute defining the practice of medicine, the argument drawn therefrom being that if the practice of osteopathy, which does require a knowledge of anatomy, physiology, pathology, and what may be called the fundamentals of medical and surgical practice, is not included in such statutes, the practice of the "magic healer" certainly cannot be. In the language of the Supreme Court of Mississippi: "A wise legislature some time in the future will doubtless make suitable regulations for the practice of osteopathy, so as to exclude the ignorant and unskillful practitioner of the art among them. The world needs, and may demand, that nothing good or wholesome shall be denied from its use and enjoyment." Hayden v. State, supra. The Supreme Court of Rhode Island, in the case of State v. Mylod, 20 R. I. 632, 20 Atl. Rep. 753, 41 L. R. A. 428, holds that the practice of Christian science is not the practice of medicine, and is not included within the act regulating the practice of medicine.

We therefore hold that, under the allegations of the petition, the plaintiff in error was not engaged in the practice of medicine, and therefore was not violating the law regulating such practice in this state. But we do not think that the plaintiff in error was entitled to recover damages for malicious prosecution from the physician who swore out the warrant against him. The question of law involved was sufficiently in doubt, in its application to his practice, to fully warrant a legal investigation of the question; and, in taking out the warrant, the defendant was fully justified by the existence of probable cause, and his act was without malice, and in behalf of the public. Besides, we think that the practice of the plaintiff in error, while not in violation of the statute regulating the practice of medicine, was presumptively an imposition upon the credulity of the public, which might in its consequences result in much injury, and that he was exercising a pretended power of magnetic healing to the deception of the people, and was obtaining their money in the shape of gifts under false pretenses, and we do not think that the law should permit him to recover damages resulting from a legitimate effort on the part of a citizen to test the legality of his practice. We therefore affirm the judgment of the court below in sustaining the demurrer and dismissing the petition.

Judgment affirmed.

NOTE.—*Whether Statutes Regulating the Practice of Medicine Apply to Schemes of Healing Which Do Not Administer Drugs*:—We believe the law on the subject of the regulation of the practice of medicine is settled upon the view adopted by the principal case that statutes setting up standards for the admission of candidates to the practice of medicine do not apply to those who do not adminster drugs or other agencies for the palliation of disease.

The reasons for this rule are two. First, such schemes as Osteopathy, Christian Science, Magic Healing, and mental science, do not constitute the practice of medicine. Second, for the court to discountenance such practices except on the ground of actual fraud, would be to show such an intolerant spirit as would paralyze all legitimate investigation except such as proceeded within the old channels.

We call attention to an article on this question 61 Cent. L. J., 424, which takes this position and cites many authorities.

For the benefit, however, of those who entertain a different view of this question we quote here from Justice Powell's dissenting opinion in the principal case which constitutes the best possible argument that statute regulating the practice of medicine especially when so worded as was the Georgia statutes proscribes all forms of healing which do not conform to the standards thus set up. Justice Powell said:

"I concur, but my concurrence is really a dissent from the views so ably propounded by Chief Justice Hill in his opinion. I think that the petition shows that the plaintiff at the time of his arrest was violating our statute against the illegal practice of medicine. Certainly he was not practicing medicine in the ordinary and popular meaning of that expression; but the framers of our statute were not content with that meaning, and gave the phrase a new and enlarged definition. According to section 1478 of the Political Code of 1895, "the words 'practice medicine' shall mean, to suggest, recommend, prescribe or direct for the use of any person, any drug, medicine, appliance, apparatus or other agency, *whether material or not material* for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or other bodily injury or any deformity, after having received or with intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation." If the definition had omitted the words italicised, then the word "agency," under the rule of construction denoted by the phrase "Noscitur a sociis," would be held to mean some agency of the same nature as drugs, medicines, and appliances, all of which

are material agencies; but with the palpable purpose of forbidding any such construction the Legislature added the words "whether material or not material." Since in the practice of medicine as popularly understood, and as regulated by the statutes of most states, only material agencies are used, it becomes manifest that the object of our statute was to regulate, not only the ordinary practice of medicine, as it is usually subjected to regulation, but also every imaginable practice by which human ingenuity should be likely to undertake to palliate or cure those physical "ills which flesh is heir to." The words "material" and "not material" are absolute contradictories, in that they exclude all middle ground, and together include everything thinkable. Human ingenuity is so multiform in its manifestations and the professing of means to cure diseases of the human mind and body furnishes such a fertile field for its display that in dealing with the question the lawmakers found it necessary to eschew specific enumerations and to employ the broadest and most comprehensive language.

I cannot agree to the proposition that the object of this statute is only to forbid quacks from pretending to be regular physicians when they are not so. The right of the Legislature to say by what systems and by what classes of persons diseases shall be treated springs from the police power of which the health and safety of the people are wards. Just as the legislature may prescribe how plumbing shall be done, of what materials and by what class of persons (Felton v. City of Atlanta, 4 Ga. App.—, 61 S. E. Rep. 27), and may thereby exclude other methods which may in fact be just as efficient, though not believed by the law to be so, and may prohibit from working in this profession men who are just as competent as the recognized and licensed plumbers, but who have not in the statutory method proved themselves to be so, so it may limit the methods by which diseases are to be treated, and may exclude every one from attempting to heal them who does not prove himself competent according to the method which the law itself believes to be the fairest and most expedient for testing his competency. I was about to draw a parallelism between the "magic healer" method of dealing with the problem of sanitary sewerage and that same method of dealing with disease, but the very statement of the first proposition would be too nonsensical and ridiculous to be judicial. The law is as much interested in protecting the lowly of intellect from the superstitious handling of disease as in protecting them from the pretentious knowledge of the quack. If every citizen of the state were capable of exercising an intelligent discrimination as to the capacities of those who offer to treat human ills, then the interference of the legislature would be an act supererogation. Only the ignorant or the superstitious need protection. Those principles of laissez faire which would forbid state interference to protect the weaker citizenship from their very weaknesses have never received much recognition in Georgia. The ignorant and superstitious parent, who takes his child critically ill to a "magic healer" when he should seek the advice and treatment of some skilled physician, and thereby lets it die, has done the perpetuation of the race the same injustice as if he had taken a knife and stabbed the child to the heart. Contemplate the effect on the community if a scourge of smallpox or yellow fever should fall upon it, and the people should submit themselves to the care of "magic healers," instead of physicians. The state has an interest in the mental and physical condition of its every citizen.

It may be that the statute which the lawmaking power has seen wise to enact excludes from the right to undertake the healing of the people some whose methods are rational and who therefore ought not to be excluded. Osteopathy may be an efficient system for the cure and palliation of fleshly ills—indeed, I think it probably is. There may be other systems equally good, but now forbidden. If so, the Legislature should authorize them; but, so long as that branch of the government to which this question is addressed says they are noxious to the public health, I feel that we as judges should hold them to be unlawful. My idea is that if any person, not having complied with the requirements of the statute, shall "suggest, recommend, prescribe or direct, for the use of any person any * * * agency, whether material or not material for the cure, relief, or palliation of any ailment or disease of the mind or body, * * * after having received or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation," he is guilty of a misdemeanor; and that the plaintiff who confesses in his petition that "his profession is and was at the time of his arrest * * * that of healing diseases without the use of medicine, commonly and better known as a 'magic healer,'" and that at that time he had a "lucrative practice" in several counties conclusively shows that probable cause existed for his arrest for a violation of the statute. It boots not that the plaintiff points to the prophets and apostles, and says "it is a matter of Christian right." If so, let him give the powers without price. "Freely ye have received, freely give," was Christ's command, as he gave his apostles miraculous power over disease and death. Simony is equally abhorrent to the divine as to the civil law. So witness Simon Magus, also Gehazi, servant of Elisha, who took the talents and changes of raiment which his master had refused for curing Naaman's leprosy and therefor suffered the master's curse, and "went out from his presence a leper as white as snow."

## HUMOR OF THE LAW.

In correcting the exercises of her class at the American School a teacher recently observed a new name inscribed on one of the papers—Tom Brown.

She looked around the class, but could see no new boy. Not a little puzzled, she requested Tom Brown to stand.

Up jumped Tommy Smith, and the teacher got more puzzled still.

"Your name's Smith," she said; "not Brown!"

Tommy looked not a little abashed, and shifted uneasily from one foot to the other.

"Please, ma'am," he said, "it's owing to family trouble. I didn't do it, please, ma'am!"

"But," she said sternly, "I repeat, your name is Smith."

"Please, ma'am," said the boy, "it's changed now. Ma's married the lodger!"

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The pompous judge glared sternly over his spectacles at the tattered prisoner, who had been dragged before the bar of justice on a charge of vagrancy.

"Have you ever earned a dollar in your life?" he asked, in fine scorn.

"Yes, your Honor," was the response, "I voted for you at the last election."

## WEEKLY DIGEST.

**Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.**



1. **Abatement and Revival** — Pendency of Another Action.—A plea of pendency of another action in a tribunal having concurrent jurisdiction must distinctly show that the same parties and the same subject-matter are before it.—State v. Stickley, S. C., 61 S. E. Rep. 211.

2. **Accident Insurance**—Breach of Warranty.—In an action on an accident policy containing a warranty that insured had not had and was not suffering from bronchitis, the proof held not to show conclusively that insured ever suffered from bronchitis within the meaning of the warranty.—French v. Fidelity & Casualty Co. of New York, Wis., 115 N. W. Rep. 869.

3. **Action**—Intent to Commit Fraud.—The existence of an intent to commit a fraud, unconnected with an act, is not actionable.—City Deposit Bank of Columbus, Ohio, v. Green, Iowa, 115 N. W. Rep. 893.

4. **Adverse Possession**—Easements.—Acquiescence by the owner of two lots in the use of a right of way over one lot by the tenant of the other, afforded no foundation for adverse possession to an agreed boundary line, other than the true line between the lots.—Teachout v. Duffus, Iowa, 115 N. W. Rep. 1010.

5.——Taking Successive Possessions.—Adverse possession of ancestor and heir may be tacked to make out the period necessary to establish title by adverse possession or presumption of a deed.—Powers v. Smith, S. C., 61 S. E. Rep. 222.

6. **Appeal and Error**—Effect of Former Decision.—Where a decision of the Supreme Court is reversed by the Court of Appeals, and on a new trial evidence is introduced tending to overcome the reasons for such reversal, the decision of the Court of Appeals is not binding on the Supreme Court in considering the appeal from the new trial.—Reilly v. Troy Brick Co., 109 N. Y. Supp. 476.

7.——Estoppel to Allege Error.—If an appellant pays off a money judgment or consents that a judgment be executed and agrees to abide the execution of the judgment, then by that act he "kills" any issue on appeal going to the validity of the judgment itself.—Hiler v. Cox, Mo., 109 S. W. Rep. 679.

8.——Objection to Evidence.—A specific objection on appeal to the admissibility of evidence cannot be considered where there was only a general objection to the evidence in the lower court for incompetency and immateriality.—Taylor v. City of Jackson, Mich., 115 N. W. Rep. 977.

9.——Procedure where Record is Incomplete.—Where a party ascertains that certain letters embracing part of the record are missing, if he wishes to obtain an order of substitution to replace them he must apply within a reasonable time for such relief, and, where he delays his application for 10 months after discovering the defect, he is precluded by his laches.—Lowery v. Lowery, Iowa, 115 N. W. Rep. 1035.

10.——Successive Appeals.—A writ of error cannot be prosecuted by or for a party to an action to reverse the judgment of a district court after that judgment has been affirmed against such party.—Wandelohr v. Grayson Co. Nat. Bank, Tex., 108 S. W. Rep. 1154.

11. **Assignment**—Contracts.—A contract for the delivery of cordwood on a railway company's right of way held assignable by the company, so as to impose upon the assignee the obligation to pay for the wood when delivered according to the contract.—Atlantic & N. C. R. Co. v. Atlantic & N. C. Co., N. C., 61 S. E. Rep. 185.

12.——Equitable Assignments.—An equitable assignment is an assignment of that much of a debt which a court of equity will recognize and

a court of law will not.—In re Macauley, U. S. D. C., E. D. Mich., 158 Fed. Rep. 322.

13.——Rights of Assignee.—The assignment of a demand entitles the assignee to every assignable remedy, lien, or credit available by the assignor as a means of indemnity or payment, unless expressly excepted in the transfer.—Roach v. Sanborn Land Co., Wis., 115 N. W. Rep. 1102.

14. **Bankruptcy**—Annuities.—Where a bankrupt, while insolvent, purchased an annuity in a mutual life insurance company, the bankrupt's trustee prior to the date the insurance company was required to pay anything under the contract held entitled to cancel the same and recover the consideration paid by the bankrupt therefor.—Smith v. Mutual Life Ins. of New York, U. S. D. C., D. Mass., 158 Fed. Rep. 365.

15.——Discharge.—Under Arkansas bankruptcy rule 12 (1) it was improper for a referee in bankruptcy pending proceedings for the examination of the bankrupt to discover assets alleged to have been concealed to report that the proceedings were sufficiently advanced to entitle the bankrupt to his discharge.—In re Johnson, U. S. D. C., D. Ark., 158 Fed. Rep. 342.

16.——Exemptions.—Under the Alabama law authorizing the selection of exemptions, it was no answer to a bankrupt's right to select exemptions out of property other than household goods claimed by his wife that such goods, in fact, belonged to the bankrupt, and were not scheduled.—In re Diamond, U. S. D. C., N. D. Ala., 158 Fed. Rep. 370.

17.——Oral Assignments.—It was no objection to the validity of an equitable oral assignment of certain accounts that actual possession thereof was not transferred.—In re Macauley, U. S. D. C., E. D. Mich., 158 Fed. Rep. 322.

18.——Replevin.—Where a seller of goods to a bankrupt claimed that the sale was induced by fraud, he could not, on rescinding the sale, recover the good in replevin after the appointment of a receiver for the bankrupt's property, though before adjudication.—In re Alton Mfg. Co., U. S. D. C., D. R. I., 158 Fed. Rep. 367.

19. **Banks and Banking**—Insolvency and Dissolution.—The closing of a bank and calling on the superintendent of banks to take charge of its assets held, under the facts, not a surrender of the bank's corporate franchise.—People v. Oriental Bank, 109 N. Y. Supp. 509.

20. **Beneficial Associations**—Compensation of Officers.—Where an officer of a fraternal society was authorized to employ a promoter, it was within the apparent scope of his authority to agree on the compensation.—Duford v. Parliament of Prudent Patricians of Pompeii, Mich., 115 N. W. Rep. 1057.

21. **Benefit Societies**—Forfeitures.—Forfeitures not being favorites of the law, certificates of insurance in fraternal benefit associations will be strictly construed as to forfeitures provided for therein.—Leech v. Order of R. R. Telegraphers, Mo., 109 S. W. Rep. 811.

22. **Bills and Notes**—Bona Fide Purchasers.—Where claimant purchased certain notes from his agent, and claimed that the agent was a bona fide purchaser for value, the burden was on the claimant to prove such fact and make a full disclosure.—In re Hopper-Morgan Co., U. S. D. C., N. D. N. Y., 158 Fed. Rep. 351.

23.——Bona Fide Purchasers.—Held, that the condition of spurious commercial paper under the circumstances of the case was not sufficient to put the purchaser on guard as to its genuineness.—State v. Corning State Sav. Bank, Ia., 115 N. W. Rep. 937.

24.——Indorsement in Blank.—A note payable to the maker becomes payable to bearer on indorsement in blank by maker, and may be transferred by delivery.—Roach v. Sanborn Land Co., Wis., 115 N. W. Rep. 1102.

25.——Liability of Sureties.—Where, in an action on a note and for attorney's fees, judgment was entered against one of the parties for the amount of the note and against the others for the amount of the note and attorney's fees, if the other parties were sureties, the judgment was erroneous.—Clements v. National Bank of Tifton, Ga., 61 S. E. Rep. 146.

26. **Brokers**—Authority to Sell Land.—Authority to sell land may be revoked by the principal where the authority is not given for a valuable consideration, or does not create an interest in the real estate.—Miller v. Wehrman, Neb., 115 N. W. Rep. 1078.

27.——Right to Commission.—That a principal is ignorant of the efforts of his broker in procuring a customer does not affect the broker's right to a commission.—Colonial Trust Co. v. Pacific Packing & Navigation Co., U. S. C. C. of App., Third Circuit, 158 Fed. Rep. 277.

28. **Burglary**—Sufficiency of Indictment.—Where a person rents a house as a dwelling, but allows a room therein to be occupied by a boarder, and this room is burglarized, the ownership of the house, in an indictment for burglary, may be alleged in the general or in the special occupant.—Boyd v. State, Ga., 61 S. E. Rep. 134.

29. **Carriers**—Carriage of Live Stock.—The consignor of a stallion shipped over connecting carriers, on the arrival of the stallion at the connecting point, may decline to ship farther, and on payment of the charges of the first carrier demand a redelivery.—Wente v. Chicago, B. & Q. Ry. Co., Neb., 115 N. W. Rep. 859.

30.——Injuries in Alighting from Moving Train.—Where a passenger, after being informed that the train will not stop at his intended destination, jumps off the moving train while passing the station, the carrier is not liable for the injuries sustained by him in consequence.—Owens v. Atlantic Coast Line R. Co. of South Carolina, N. C., 61 S. E. Rep. 198.

31.——Negligence.—While proof of any negligence is admissible in support of general allegations of negligence in an action by a passenger for injuries, allegations of specific acts of negligence will prevent admission of other acts of negligence.—Kirkpatrick v. Metropolitan St. Ry. Co., Mo., 109 S. W. Rep. 682.

32.——Negligence.—Whether each of two intersecting railroads was negligent in causing a collision held for the jury, notwithstanding the use of an interlocking device.—Van Orman v. Lake Shore & M. S. Ry. Co., Mich., 115 N. W. Rep 968.

33. **Chattel Mortgages**—Mistake in Date.—Where a mortgage on its face shows that it must have been intended to be given on a crop to be sown during the season following its date, the intent will give effect, though the mortgage expresses another year by mistake.—Gorder v. Hilliboe, N. D., 115 N. W. Rep. 843.

34.——Splitting Cause of Action.—The bringing of a suit on a note for the payment of which a chattel mortgage was given as collateral security is not a splitting of a cause of action, and does not prevent enforcement of the mort-

gage.—Avery Mfg. Co. v. Leathers, Mo., 109 S. W. Rep. 851.

35. **Conspiracy**—Securing Title to Public Lands.—A conspiracy to secure the title to coal lands from the United States through a homestead entry may constitute a conspiracy to defraud the United States within Rev. St. Sec. 5440 (U. S. Comp. St. 1901, p. 3676, although such lands are not subject to lawful homestead entry where the title is secured by means of false proofs.—United States v. Lonabaugh, U. S. D. C., D. Wyoming, 158 Fed. Rep. 314.

36. **Constitutional Law**—Due Process of Law. —The fourteenth amendment to the Constitution of the United States, requiring due process of law, merely applied to the legislation of the states an elementary principle of the common law, which was a part of the fundamental law of the several states and which the federal courts in administering the law of the states were previously bound to recognize and enforce.—Anderson v. Messenger, U. S. C. C. of App., Sixth Circuit, 158 Fed. Rep. 250.

37.——Right of Mayor to Remove City Officers.—St. Louis City Charter, art. 4, Secs 5, 15, 16, 47 (Ann. St. 1906, pp. 4823, 4825, 4835), and the ordinances adopted thereunder, empowering the mayor to remove city officers, held not to violate Const. art. 3 (Ann. St. 1906, p. 172), distributing the powers of government, and article 6, Sec. 1 (Ann. St. 1906, p. 212), vesting the judicial power in the courts of the state.—State v. Wells, Mo., 109 S. W. Rep. 758.

38. **Contracts**—Construction.—Ordinarily, in construing a contract, words are prima facie to be given their ordinary meaning, but not when the context or admissible evidence shows that another meaning was intended.—Atlantic & N. C. R. Co. v. Atlantic & N. C. Co., N. C., 61 S. E. Rep. 185.

39.——Excuse for Defects in Work.—Where the failure of a refrigerator plant installed in a hospital to do the guaranteed work was caused by the plant having been installed in the manner directed by the hospital's architect over the contractor's protest, the latter may recover for the work, even if the plant did not operate as guaranteed.—Freidenrich v. Condict, 109 N. Y. Supp. 526

40.——Failure to Read.—Failure to read a contract before signing is gross negligence where the signer was able to read. — International Text-Book Co. v. Lewis, Mo., 108 S. W. Rep. 1118.

41.——Implied Contracts.—An implied contract held to exist in favor of a tenant that a firm contracting with the owner to make improvements on the building will complete the work within the time specified in their contract with the owner.—Ottumwa Mill & Const. Co. v. Manchester, Iowa, 115 N. W. Rep. 911.

42. **Contribution**—Directors and Officers of Bank.—In an action against officers and directors of a corporation for misconduct, there could be no contribution in equity between those who neither participated in the same acts nor served at the same time.—People v. Equitable Life Assur. Soc. of United States, 109 N. Y. Supp. 453.

43. **Corporations**—Dissolution.—The fact that the business is a losing one under the majority management is not a reason why the minority may have the corporation dissolved in equity, in the absence of some statutory authority.—Platner v. Kirby, Iowa, 115 N. W. Rep. 1032.

44.——Individual Liability of Trustees.—The trustees of a corporation held individually liable for the purchase price paid for the assignment of a permit to drill a well.—Shannon v. Mastin, Mo., 108 S. W. Rep. 1116.

45.——Liability of Directors.—A director who was neither an officer nor a member of the executive and finance committees of the corporation held not personally liable for transactions accomplished by them.—People v. Equitable Life Assur. Soc. of United States, 109 N. Y. Supp. 453.

46.——Liability of Stockholders on Unpaid Stock. — Attempted reduction of liability of stockholders to a corporation on account of unpaid stock subscriptions by declaration of dividends on the basis of assets which were not profits held void as against creditors of the corporation or a trustee in bankruptcy.—Crawford v. Roney, Ga., 61 S. E. Rep. 117.

47.——Sale of Stock.—Failure to disclose to plaintiff that defendant was a stockholder in a company which was intending to purchase stock which defendant asked plaintiff to send to him, if she was willing to accept a certain price, held not a fraud on plaintiff.—Wann v. Scullin, Mo., 109 S. W. Rep. 688.

48.——Suing on Behalf of Corporation. — A stockholder of a corporation held, under the circumstances, entitled to sue on behalf of the stockholder to protect the right of the corporation to certain real estate which its president had permitted to be sold for taxes and fraudulently diverted to his own use.—Donnelly v. Sampson, Wis., 115 N. W. Rep. 1089.

49. **Courts**—Failure of Judge to Attend Court.—Where the county judge fails to attend at the commencement of any regular term, all cases pending and triable at such term are, by operation of law, continued to the succeeding term.—Pitman v. Heumeler, Neb., 115 N. W. Rep. 1083.

50. **Criminal Trial**—Argument of Counsel.—It is error for the prosecuting attorney in a criminal case in his address to the jury to comment on facts not in evidence, or to use language calculated to excite the prejudice or inflame the passions of the jury.—State v. Upton, Mo., 109 S. W. Rep. 821.

51.——Insanity as a Defense.—Instruction that, if accused was at the time of the commission of the criminal act laboring under an aberation of mind to such a degree that he was unconscious of his acts, he should be acquitted, held not error.—Hamblin v. State, Neb., 115 N. W. Rep. 850.

52.——Verdict.—Refusal of trial court to set aside verdict on the ground that the jury had attended a performance at the theater before determination of cause held not error.—State v. Jeffries, Mo., 109 S. W. Rep. 614.

53. **Damages**—Loss of Earning Capacity.—A loss or impairment of earning capacity is an element which may be considered by the jury in estimating the damages one has sustained from a personal injury, although he may have permanently retired from business before he was injured.—El Paso Electric Ry. Co. v. Murphy Tex., 109 S. W. Rep 489.

54.——Sufficiency of Petition.—An averment in the petition that plaintiff was compelled to neglect his business is not equivalent to an averment of loss of time or earnings, and is not sufficient as a basis for the admission of evidence of damage for such loss.—Keen v. St. Louis, I. M. & S. R. Co., Mo., 108 S. W. Rep. 1125.

55. **Death**—Burden of Proving Negligence.—The rule placing the burden of proving want of contributory negligence upon plaintiff in negligence cases held not abrogated even in death actions, where there are no eyewitnesses, nor where the decedent is a child.—Gallagher v. New York Ry. Co., 109 N. Y. Supp. 515.

56. **Deeds**—Delivery.—A deed placed by the grantor in the hands of a third person with unconditional instructions to deliver it at a specified time will, unless the grantor reserves the right to revoke it, pass a present interest in the land.—Kneeland v. Cowperthwaite, Iowa, 115 N. W. Rep. 1026.

57.——Duress.—Before a conveyance will be set aside as having been given under duress, the proof must be clear and satisfactory.—Anderson v. Anderson, N. D., 115 N. W. Rep. 836.

58.——Rule in Shelley's Case.—Where a conveyance is to one for life with remainder over to the children of the life tenant, the words of the grant are to be taken as words of purchase; and the rule in Shelly's Case has no application.—Ault v. Hillyard, Iowa, 115 N. W. Rep. 1030.

59. **Drains**—Proceedings to Clean Drain.—The failure of the drain commissioner to file the papers in proceedings to clean and extend a drain held not to deprive one assessed for the cost of the work of his remedy to review the proceedings.—Auditor General v. Crane, Mich., 115 N. W . Rep. 1041.

60. **Estoppel**—Position in Litigation.—Sellers of hay having denied a delivery or that title had passed held estopped to resist the sellers' right to treat the contract as executory, and recover the difference between the price and market value at the date delivery was contemplated.—Driggs v. Bush, Mich., 115 N. W. Rep. 985.

61. **Execution**—Forthcoming Bond. — Where the property of a tenant was levied on, and a forthcoming bond given with his landlord as security the tenant could not thereafter deliver the property to the landlord in settlement of a debt, and release the latter from liability on the bond.—Rowland v. Page, Ga., 61 S. E. Rep. 148.

62. **Executors and Arministrators** — Claims Against Estate.—A daughter held entitled to recover against her father's estate for services, where there was evidence that both father and daughter understood that compensation should be made therefor.—In re Smith's Estate, Mich., 115 N. W. Rep. 1052.

63.——Impeachment of Discharge.—Failure of executors to account for shares of stock in a certain corporation held not to warrant disturbing an order of discharge in the absence of a showing of prejudice to a substantial right of a party interested.—Bradbury v. Wells, Ia., 115 N. W. Rep. 880.

64.——Sale of Land.—The sale of land belonging to an estate by the administrator subject to the widow's homestead rights, when only a part thereof was subject thereto, was a mere irregularity which did not invalidate the sale on collateral attack.—Brown v. Hannah, Mich., 115 N. W. Rep. 980.

65. **Frauds, Statute of** — Part Payment. — Where a buyer of hay paid for baling the same under an oral contract to pay the seller $10 per ton, the buyer to bale the hay, such payment constituted a sufficient part payment to take the case out of the statute of frauds.—Driggs v. Bush, Mich., 115 N. W. Rep. 985.

66. **Fraudulent Conveyance**—Intent to Defraud.—The absence of any intent by grantee to defraud or any circumstance tending to show that grantee knew of any intended fraud may be considered in determining the good faith of a deed.—Joy v. Helbing Cal., 94 Pac. Rep. 863.

67. **Guardian and Ward**—Unauthorized Investments.—An unauthorized investment of a ward's funds is not void, but voidable only, as against one who takes the ward's property with knowledge that the guardian has no authority to transfer it.—McCutchen v. Roush, Iowa, 115 N. W. Rep. 903.

68. **Habeas Corpus**—Questions Reviewable.—Where defendant pleaded guilty to a charge of publishing defamatory pictures, the sufficiency of the complaint under which he was convicted may not be reviewed on habeas corpus.—In re Upson, Cal., 94 Pac. Rep. 855.

69. **Highways**—Alteration of Width.—Width of a road established by the county commissioners as defined by the road commissioners cannot be increased simply by an order of classification.—Buchanan v. James, Ga., 61 S. E. Rep. 125.

70.——Automobile Causing Horse to Frighten.—An operator of an automobile in a street held, as a matter of law, free from negligence, and relieved from liability for injuries caused by a horse taking fright and running away.—O'Donnell v. O'Neil, Mo., 109 S. W. Rep. 815.

71.——Regulations.—Where an electric lighting corporation unlawfully erects and maintains its poles and wires on a public highway in which the public has only an easement, ejectment is a proper remedy in an action by the owner of the adjoining land to prevent such unlawful use of the highway.—Gurnsey v. North California Power Co., Cal., 94 Pac. Rep. 858.

72. **Indictment and Information**—Forgery.—Forging and fraudulently uttering and publishing the same instrument by the same person constitutes one crime, which may be charged in a single count of an information.—State v. Leekins, Neb., 115 N. W. Rep. 1080.

73. **Injunction**—Trespass.—In a suit to enjoin trespass on land against the one under whom plaintiff claims, it was not necessary that plaintiff prove title in the one under whom she claimed.—Loudermilk v. Martin, Ga., 61 S. E. Rep. 122.

74. **Intoxicating Liquors**—Disorderly House.—A single sale or gift of intoxicating liquor by a dramshop keeper to two minors held not to make his place a disorderly one within Ann. St. 1906, Sec. 3012.—State v. Lichta, Mo., 109 S. W. Rep. 825.

75.——Illegal Sale.—Where defendant accused of a sale of intoxicating liquors is found in an apparently guilty situation, an unreasonable explanation is worse than none at all.—Davis v. State, Ga., 61 S. E. Rep. 132.

76. **Judgment**—Dismissal of Action.—Where a demurrer was properly sustained on the general ground, it was, at least in the absence of a showing that leave to amend was requested, not error to enter judgment of dismissal without granting such leave.—Bell v. Bank of California, Cal., 94 Pac. Rep. 889.

77.——Motion for.—Plaintiff's motion for judgment upon the record, including the testimony adduced, made after a jury had been discharged after finding generally and specially for defendant, and after plaintiff was granted a new trial, was properly overruled. — Hamill v. Joseph Schlitz Brewing Co., Iowa, 115 N. W. Rep. 943.

78. **Jury**—Prejudice of Sheriff.—Determination of whether or not sheriff is prejudiced against accused so as to render him incompetent to summon jury panel held for the trial court, and not reviewable.—State v. Jeffries, Mo., 109 S. W. Rep. 614.

79. **Landlord and Tenant**—Injuries to Crops.—Where a tenant seeks to recover form a tortfeasor for crops injured, it is not material that he may be held to his landlord or some other persons for an interest in the crop.—Blunck v. Chicago & N. W. Ry. Co., Iowa, 115 N. W. Rep. 1013.

80.——Lease.—Plaintiffs held tenants at will of defendants, and not bound by a provision of a former lease of the premises absolving defendant from liability for loss by fire.—Ft. Worth & D. C. Ry. Co. v. J. C. Woolbridge & Son, Tex., 108 S. W. Rep. 1159.

81.——Obligation of Tenant.—Where the sole compensation to a lessor is a share of what is produced on the leased premises, there is an implied covenant on the part of the lessee, for a diligent operation of the premises.—National Light & Thorium Co. v. Alexander, S. C., 61 S. E. Rep. 214.

82. **Libel and Slander** — Venue.—A publisher may be sued for libel in any county in which its paper is circulated.—Meriwether v. Publishers George Knapp & Co., Mo., 109 S. W. Rep. 750.

83. **Limitation of Actions**—Public Lands.—Limitations run against the title of a preemptor of public land from his compliance with the requisites to entitle him to a patent, in favor of one who holds adversely.—Eastern Banking Co. v. Lovejoy, Neb., 115 N. W. Rep. 857.

84. **Malicious Prosecution**—Payment of Money under Duress.—If a person arrested for a debt pays the claim without protest, he cannot maintain an action for malicious prosecution, but, if he denies the indebtedness and pays the money simply to procure his freedom, he is not thereafter debarred from maintaining such an action.—Smith v. Markensohn, R. I., 69 Atl. Rep. 311.

85. **Marriage**—Liabilities of Parties to Illegal Marriage.—Where the testator, with his wife living, entered into a marriage contract with plaintiff, plaintiff had a good cause of action against the testator for the injury he had caused her in marrying her while his wife was living.—Colt v. O'Connor, 109 N. Y. Supp. 689.

86. **Master and Servant**—Contributory Negligence.—If a servant, 16 years of age, though uninstructed as to the use of a dangerous machine by his master, knows enough about the machine to apprehend the danger from its use by him, any negligence on his part in operating it will be a bar to his recovery for injuries therefrom.—Marklewitz v. Olds Motor Works, Mich., 115 N. W. Rep. 999.

87.——Contributory Negligence.—Where an employee willfully encounters danger known to him or open to be seen by him, he cannot recover for injuries caused thereby.—Priddy v. Black Betsey Coal & Mining Co., W. Va., 61 S. E. Rep. 163.

88.——Fellow Servants.—Where an assistant metal press operator was injured by the negligence of the operator in prematurely lowering one of the dies of a press, such assistant and the operator were fellow servants, precluding a recovery for injuries resulting from the operator's negligence.—Ladiew v. Sherwood Metal Working Co., 109 N. Y. Supp. 477.

89.——Personal Services.—A person hiring out to do legal editorial work held not an independent contractor even if not an ordinary servant.—Edward Thompson Co. v. Clark, 109 N. Y. Supp. 700.

90.——Right to Invention of Servant.—A contract of employment by which the servant agreed that all machinery, tools, and devices invented by him during his employment should belong to the employer held to include certain devices which the servant secretly invented at home during such term.—Detroit Lubricator Co. v. Lavigne Mfg. Co., Mich., 115 N. W. Rep. 988.

91. **Mortgages**—Construction of Terms.—The words "prior to maturity" in an agreement executed contemporaneously with a mortgage held to mean a time prior to the election of the mortgagee to declare the entire debt due for default in part payment thereof.—Bartlett Estate Co. v. Fairhaven Land Co., Wash., 94 Pac. Rep. 900.

92.——Easements.—An easement over mortgaged property should not be established by subsequent acquiescence of the owner so as to bind a grantee of property claiming title under foreclosure of the antecedent mortgage.—Teachout v. Duffus, Iowa, 115 N. W. Rep. 1010.

93. **Municipal Corporations**—Assessments for Local Improvement.—A statute levying assessments for local improvements on the value of the property or on the benefits derived is not unconstitutional.—Kirst v. Street Improvement Dist. No. 120, Ark., 109 S. W. Rep. 526.

94.——Care Required as to Condition of Streets.—A city assuming to improve a street and put it in condition for travel is under the legal duty of seeing that the street is under all ordinary circumstances kept in a reasonably safe condition.—Larsen v. City of Sedro Woolley Wash., 94 Pac. Rep. 938.

95.——Liabilities for Torts.—A municipal corporation is not, as a general rule, liable for tortious injuries to the property of individuals when engaged in the performance of public or governmental functions.—Heape v. Berkeley County, S. C., 61 S. E. Rep. 203.

96.——Obstruction of Street.—The presence of vehicles held not a temporary obstruction of a street within a municipal ordinance requiring vehicles to drive at the right of the center of the street, unless the street is temporarily obstructed.—State v. Larrabee, Minn., 115 N. W. Rep. 948.

97. **Negligence**—Natural and Probable Consequence.—Negligence does not depend upon whether the result of the act might reasonably have been foreseen; it being sufficient to support the charge of negligence, if the result of the act is natural, though not inevitable, or if ordinary prudence would suggest that the act or omission would probably result in injury.—Haase v. Morton & Morton, Iowa, 115 N. W. Rep. 921.

98.——Questions for Jury.—What course of conduct ought to be pursued by one to meet the requirement of ordinary care and prudence in a certain situation is a jury question; and courts will rarely assume to say that the conduct is or is not negligence.—International & G. N. R. Co. v. Vallejo, Tex., 108 S. W. Rep. 1187.

99.——Res Ipsa Loquitur.—The falling of a sign by which plaintiff was injured held prima facie evidence of the owner's negligence, but he could show that he was not negligent for the reason that the sign had just been put up by a competent man upon whom he relied.—McNulty v. Ludwig & Co., 109 N. Y. Supp. 703.

100. **Officers**—Resignation.—Where a meeting of a portion of the electors of a town had no authority to accept the resignation of an officer, the officer might subsequently withdraw the resignation and continue to hold the office, notwithstanding the election of a successor.—State v. Stickley, S. C., 61 S. E. Rep. 211.

101. **Partnership**—Apparent Authority of Agent.—Plaintiff having dealt with defendant's agent under a written power of attorney signed by the firm of which defendant was a partner, he could not rely on the implied power of the agent as a partner, but was confined to the express authority contained in the written power.—Taylor v. Sartorious, Mo., 108 S. W. Rep. 1089.

102.——Liabilities as to Third Persons.—It is fundamental that each partner is the agent of the firm while engaged in the prosecution of the partnership business, and that the firm is liable for the torts of each, if committed within the scope of the agency.—Haase v. Morton & Morton, Iowa, 115 N. W. Rep. 921.

103.——Right of Partners to Attend to Individual Interests.—A member of a law firm has a right to attend to his individual interests having no connection with the practice of his profession, and, unless such action takes his attention or his time so as to materially interfere with his professional duties, his partner cannot complain.—Roth v. Boles, Iowa, 115 N. W. Rep. 930.

104. **Pledges**—Warehouse Receipt.—The delivery of a warehouse receipt by a warehouseman, licensed to do business under Laws 1901, p. 180, c. 41 (Rev. Codes 1905, Secs. 2262, 2272), on property owned by him to his creditor as security for the debt, held to operate as a pledge without actual change of possession, rendering the surety on the warehouseman's bond liable for the safe-keeping of the property.—State v. Robb-Lawrence Co., N. D., 115 N. W. Rep. 846.

105. **Principal and Agent**—Constructive Notice.—The doctrine of constructive notice has no application where the parties relying on it are the agents themselves and others who had agreed with them that the agents were not to communicate the facts to the principal.—Traders' & Truckers' Bank v. Black, Va., 60 S. E. Rep. 743.

106.——Power of Attorney.—The fact that blank spaces are left on a written power of attorney does not render the principal liable, if the spaces are subsequently filled in by the agent so as to extend his authority.—Taylor v. Sartorious, Mo., 108 S. W. Rep. 1089.

107. **Principal and Surety**—Assignment of Contract.—The lessor of a railroad held entitled to recover against the lessee the amount of a judgment and costs recovered against it on the lessee's refusal to receive performance of a contract made by the lessor and assigned to the lessee.—Atlantic & N. C. R. Co. v. Atlantic & N. C. Co., N. C., 61 S. E. Rep. 185.

108.——Discharge of Surety.—Where persons signed a note as sureties on condition that the signature of another would be procured, failure to procure such signature absolved them from liability.—Bank of Benson v. Jones, N. C., 61 S. E. Rep. 193.

109.——Liability of Surety.—The sureties on a bond executed by a bank to save a county treasurer harmless as to loss of deposits are not liable for any defalcation occurring before they assumed the obligation to the county or its treasurer.—Fremont County v. Fremont County Bank, Iowa, 115 N. W. Rep. 925.

110. **Public Lands**—Limitation of Action.—An alienee of a grantor of public land must give notice to the local land office of his interest to entitle him to notice of proceedings against his grantor.—Eastern Banking Co. v. Lovejoy, Neb., 115 N. W. Rep. 857.

111. **Quieting Title**—Proceedings and Relief.—In an action by a corporation to quiet its title to certain land, a provision for liquidated damages in case of a breach of a contract held not to apply to the matter in issue so as to prevent a recovery by plaintiff.—Thompson-Spencer Co. v. Thompson, Wash., 94 Pac. Rep. 935.

112. **Railroads**—Injury to Child on Track.—A fireman on a moving train who sees a child approaching it is bound to act promptly to prevent its injury.—International & G. N. R. Co. v. Vallejo, Tex., 108 S. W. Rep. 1187.

113. **Replevin**—Counterclaims.—Where a defendant seeks damages for the taking of property replevied in a suit in the circuit court, in order to recover damages, he must file a counterclaim for the same.—Gurley Bros. v. Bunch, Mo., 108 S. W. Rep. 1109.

114. **Sales**—Fraud.—As a general rule, a party defendant in a suit in equity may avail himself of every legal defense not inequitable in its nature; and, where personal property is sold by fraudulent representations, the defense of fraud is not inequitable.—Smith v. Werkheiser, Mich., 115 N. W. Rep. 964.

115.——Fraudulent Representations. — Where defendants sold complainants a newspaper by fraudulent representations, the latter may recover the damages resulting from the fraud in an action at law, or may recoup such damages in a suit by the sellers, or their assignees, for the balance of the purchase price.—Smith v. Werkheiser, Mich., 115 N. W. Rep. 964.

116. **Specific Performance**—General Warranty.—Where a vendee took a decree vesting his vendor's title in him, it would be assumed that the vendee thereby waived performance, in so far as the contract required a conveyance with general warranty and an abstract of title.—Jasper v. Wilson, N. M., 94 Pac. Rep. 951.

117. **Statutes**—Construction of Foreign Statute.—The rule relating to the construction of a foreign statute on its adoption by the Legislature held to govern when only the substance of the foreign statute or some controlling word thereof has been adopted.—State v. Miles, Mo., 109 S. W. Rep. 595.

118. **Street Railroads**—Boarding Street Cars.—A passenger of a street car held not negligent as a matter of law in taking a certain position preparatory to boarding the car, from which position she was pushed under the car by the crowd behind her.—Cousineau v. Muskegon Traction & Lighting Co., Mich., 115 N. W. Rep. 987.

119.——Care Required.—A motorman in operating a street car through the thickly settled part of a city must keep a lookout for pedestrians traveling on intersecting streets.—Remillard v. Sioux City Traction Co., Iowa, 115 N. W. Rep. 900.

126. **Wills**—Construction.—A will construed, and held to give a vested interest in the property to the devisees on testator's death; the enjoyment being postponed until a younger son, became of age, and the transfer of a devisee's interests after testator's death, but before such event, conveyed a good title.—Ross v. Ayrhart, Iowa, 115 N. W. Rep. 906.